IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 744 of 2006
Date of decision: 1.9.2006

Municipal Committee, Ganaur through its Secretary/Chairman

--- Appellant

Versus

Daya Nand --- Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Rameshwar Malik, Advocate for the appellant.

JUDGMENT

This is defendant's second appeal against which a suit filed by the plaintiff for declaration with consequential relief of permanent injunction had been dismissed by the trial court but on appeal by the plaintiff, the relief for declaration was declined but a decree for permanent injunction was passed in his favour.

The plaintiff filed a suit for declaration to the effect that he was owner in possession of the suit property as co-sharer. He was using the land in dispute in the shape of a ***ghair*** bounded by four walls, on which barbed wire has been fixed. There are ***Khor,*** *trees and* ***Kurries*** of the plaintiff and it was brick-paved near the Khor and that the plaintiff was enjoying the possession of the same being owner/co-sharer of the property in dispute shown in the site plan with letters A B C D and the defendant has absolutely no concern whatsoever with the property in dispute. Further a decree for permanent

injunction was also prayed for restraining the defendant from interfering in any manner in the possession of the plaintiff over the suit property till ejected or dispossessed in due course of law. Defendant took a plea in the written statement that it was the owner in possession of the suit property which was reserved for common purposes as Gair Mumkin Johar and therefore, the same vested in the Committee because the revenue area of village Garhi Kesri came in the territorial jurisdiction of the defendant-Municipal Committee.

Trial court on appreciation of evidence did not accept the pleas raised by the plaintiff of being owner or in possession of the suit property and it was on this basis, both the reliefs i.e. for declaration as well as for permanent injunction were declined. Plaintiff preferred appeal before the District Judge and ultimately the appeal was heard and disposed of by the Additional District Judge. While the first appellate court concurred with the finding of the trial court refusing the relief for declaration, it passed a decree for permanent injunction restraining the defendant to dispossess the plaintiff from the suit land forcibly and illegally except in due course of law.

I have heard learned counsel for the appellant and gone through the record. Counsel for the appellant vehemently submitted that the findings recorded by the courts below on issue No.1 are wrong and cannot be legally sustained. This submission has been noticed just for rejection, for the counsel could not pin-point any error of law and perversity in the said finding so as to persuade this Court to interfere therewith. The trial court on appreciation of evidence returned a finding of fact that the plaintiff cannot be declared to be the owner of the property in dispute. This finding has been affirmed by the first appellate court. As regards finding on issue No.2, the first appellate court differed with the conclusion of the trial court and on the basis of the observations of the Apex Court in M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, A.I.R. 1972 S.C. 2299, held that the defendant

– Municipal Committee was not having better title than the plaintiff but the appellant on the strength of his being in possession can be granted the relief of permanent injunction. The conclusion regarding possession of the plaintiff came to be arrived at on the basis of unchallenged testimony of the plaintiff himself who categorically stated that he had bounded the suit property with four walls and over which the barbed wire had been fixed and although the defendant-Committee was in existence for the last 20 years but he was in possession of the property before the consolidation. PW-2 Dhan Parkash and PW-3 Subhash had also deposed in favour of the plaintiff being in possession of the property in dispute. No interference is called for with this finding of the first appellate court whereby the finding of the trial court regarding possession of the plaintiff on the disputed property had been reversed. No question of law, much less a substantial question of law arises in this appeal for the consideration of this Court. The appeal is consequently dismissed

(AJAY KUMAR MITTAL)
JUDGE

September 01, 2006
MALIK